



**MINUTES OF THE GILA COUNTY
BOARD OF ADJUSTMENT**

Thursday, November 3, 2016

GILA COUNTY BOARD OF SUPERVISORS CONFERENCE ROOM

610 E Highway 260, Payson, AZ

9:00 am

SPECIAL MEETING

1. The meeting was called to order at 9:06 am by Chairman Don Ascoli.
2. Pledge of Allegiance was led by Chairman Don Ascoli.
3. Roll Call: Therese Berumen did the roll call; Chairman Don Ascoli, Mickie Nye, Travis Williams, Mary Lou Myers, and Kurtis Knauss were all present. A quorum is present.

Community Development Staff Members Present: Robert Gould-Planner, Scott Buzan-Building Official, Margie Chapman-Code Compliance Supervisor/Zoning Assistant, Deb Bradway-Administrative Assistant and Therese Berumen-Administrative Assistant.

4. **Planner Communication:** At any time during this meeting of the Board of Adjustment, Planner Bob Gould of Community Development may present a brief summary of current events. Bob stated that this was a special meeting and that there will be a variance application that is scheduled to be heard this month on the 17th because we couldn't get it on this agenda. Mickey asked if it was going to be held in Globe or Payson. Bob stated it would be held in Payson because that is where the applicant resides. Don stated that he assumes it is a Thursday. Bob said yes it is a regular Thursday Board meeting. He also stated that there will be a commission meeting also that day.

PUBLIC HEARING

5. **V16-04 Application by Alejandro and Linda Martinez:** Application for a Variance on Gila County Tax Assessor Parcel 301-24-122, located at 3798 Anvil Road, Pine, AZ. The applicant is asking for a side setback of 3 feet, 6.5 inches for a garage. Application was tabled until this meeting, so the Gila County Community Development staff could get more accurate measurements.

Planner Bob Gould presented the staff report overview. At the last meeting, 2 weeks ago, we heard this application and several questions came up. What the board had the right to do, building code concerns and also what the actual setback measurements were. Mary Lou, Don, Margie and I went out to the Martinez's property. We found the building separation was fine. The rear setback was an issue, but applicant has agreed to rectify that. The side setback was measured at 3 feet, 6 ½ inches. There seems to be a lot of trouble with this property and determining where the property lines are. Don stated that they measured from the block wall. Bob stated that the block wall wasn't there when they took the first measurements. The complaints that we had at the time were concerning property value and a potential fire hazard because it is so close to the

property line. We spoke with Mr. Martinez and he was given 3 options. First option was to abide by all setbacks that were required. Second option was to abide by Administrative Variance and to build to fire code standards. Third option was to apply for a variance. Staff recommendation, regardless to what has happened, is to have him put the fire protection on the building. The only thing we can deal with today is the side setback. Whatever decision you make, I support 100%. I have a hard time with the fact of him only being 18 inches off and having him tear it down and move it. That is why I made the recommendation that I did, but at the same time, I will fully support any decision you make. I gave you a statement regarding the issue of the rights of the Board of Adjustment, specifying that the Board can only deal with the zoning aspect regarding this application. Building codes are the responsibility of the building official. Don opened it up to the members of the board. Mickie asked Bob a couple of questions. He asked if a permit was pulled on this and asked once a permit is pulled, that after the foundation, rebar, etc. is completed, inspections are done. Bob answered yes. Bob also stated that the first inspection is usually checking setbacks as well. Bob asked Margie if this was a code enforcement complaint. Margie stated yes it was. Scott Buzan wanted to walk through what they did when they went on site and inspected it. The block wall was not present at the time. The terrain was actually flat coming away from the foundation and there was a small bank that went up, probably about 2 feet tall. The property line was strung on the top of that bank. The contractor over excavated the footing, so that was some leeway where the wall would be. The inspector spoke with the contractor and informed him that he had to make sure he maintained the 5 foot setback. The contractor said he would. Mickie stated that this might just be a contractor's error then. Travis Williams asked if the property had been surveyed and if they were sure of the property lines. Bob stated yes that the property had been surveyed and the property line had been strung according to that. We assumed the block wall is on the property line and used that for a guide for the side setback. Mickie asked if he was a licensed contractor. Bob stated that yes he was. Bob clarified that it is the full responsibility of the property owner to provide property lines. Don clarifying that the requirement is 7 feet for a side setback, property owner applied for an Administrative Variance for a 5 foot setback, agreed it would be 5 feet and proceeded with the work, the block wall appears, and after the wall is there, discovered that it was a lot closer. Don also wanted clarification that anything closer than 5 feet needs to be fire rated, correct. Bob stated that was correct. Scott Buzan brought up that once they put the fire rating and stucco, which they stated they wanted to do, it would bring it even closer to the property line. Travis Knauss asked if they approve the variance, they property owner just needs to meet the standard code for fire rating, correct. Don stated yes, I believe that to be correct.

The meeting was opened to public comment.

Bryan Jordan (neighbor right next door) stated that he thinks the variance that was granted for the 5 feet should be adhered to. I had to abide by the setbacks on my property and I don't see why they should be any different. Linda Martinez wanted to clarify that they had two surveyors come out and both confirmed same property lines. The meeting's public portion was closed.

Mickie stated that he wants to do what is right and fair. I agree rules are rules and I also think the contractor should build appropriately. Bob stated he agreed and had the same

issues. Travis asked if the setbacks are strictly for fire prevention. Bob stated that no, it was also for the design of the neighborhood, but mostly for fire prevention. Mary Lou felt like rules are rules. Said if the contractor is at fault, she is sorry, but it is difficult to approve something that keeps changing. Also stated that she was distraught by the comment in their packet about it "being a difficult situation due to the fact that Mr. Martinez didn't know exactly where his property lines were located and they kept changing on us." That was a little troubling Bob. If it is strung by and done by a licensed surveyor, I don't know how it keeps changing. Mickie asked Mr. Martinez if this was a contractor's error. He stated it obviously was. Also stated they weren't home when they were doing the work. Mrs. Martinez stated that they want to follow the guidelines and remedy whatever needs to be fixed. Travis asked Mr. Martinez if he had spoken to the contractor. Mr. Martinez stated that he had just yesterday. Don asked since you have spoken to the contractor and he is aware of the issue, what is his explanation as to why it is that short? Mrs. Martinez said to be honest; he said it was the county's problem. Mickie asked Bob what the heartburn would be if they had to move the garage. Bob said it would be very expensive. Kurtis stated that he sympathizes with the Martinez's, but the licensed contractor should know the rules and regulations. My heart says to grant the variance, but my mind says, if you give this variance, future contractors are going to push this issue and there is no accountability back on the contractor. I think the contractor needs to be held accountable. Don stated that it appears that the contractor didn't do enough checking into the things that needed to be done. Most homeowners don't know all the rules and regulations. They rely on the contractors. He also stated that he agrees with the board members. He asked if any of the board members had any further questions or concerns.

Mickie motioned with his deepest regret, that they do not approve V16-04 for the 3 foot, 6.5 side setback and go back to the 5 foot setback that was previously approved. The motion was seconded by Travis Williams. The motion was approved unanimously.

6. Adjournment. Mary Lou Myers made a motion to adjourn the meeting and Travis Williams seconded the motion. The motion to adjourn was unanimously approved at 9:52 am.